

From: Will Wang Graylin <wgraylin@roamdata.com>
To: 'John Frontz'
Sent: 4/24/2010 1:29:08 PM
Subject: RE: BBPOS Development and License Agt.
Attachments: ROAM BBPOS DLAgt 4 23 10.doc

Hi John,
 I'm glad you are feeling better about the deal. I think you'll enjoy a visit to HK and China for that matter while you are there.

Regarding royalty of \$3 if they sell into China and Philippines, I added that they'll let us offer our solution jointly with them, (section 1.3), and if the customer only wants hardware with no recurring service, we split the margin with them 50/50, which can be a lot more than \$3/unit.

Regarding warrants, they are a HK entity and still owes \$350K to HK Government which means they have to pay back this amount at some point for them to change ownership structure beyond 51% control. Asking them for warrants right now is more token amounts and would take time, it does not buy us voting rights and is only valuable if someone buys them. With our contract here and how it is structured, the most likely candidate to buy them when there is traction would be ROAM/Ingenico. My goal is to build up a relationship and revenue meaningful enough to eventually absorb them into ROAM. At this point this contract is what locks us in to their core products, which is the biggest value.

Talk more later,
 Cheers,
 Will

From: John Frontz [mailto:jfrontz@roamdata.com]
Sent: Saturday, April 24, 2010 1:34 AM
To: Will Wang Graylin
Subject: Re: BBPOS Development and License Agt.

Thanks Will – this explanation now brings this deal into perspective. I wasn't understanding that they had these products before we spoke with them and helped them (I was assuming they sent us what they had at that point), so I think I see the value they are bringing. I understand your comments and am feeling better about the deal with your notes and modifications. Any chance we could get some warrants in their company, since we are helping them survive and grow? I know we are giving them options in ours and it might be nice for them to reciprocate with a vested position in them as well. If we have any part in seeing these products to final form, asking for a \$3 royalty on their China sales – would that be unreasonable? Just send me a note on these two last points, and we can move forward. You know I'm always trying to just make sure we are leveraging our relative position – when you pay, you dictate terms. I'd like to meet these guys sometime – maybe your next visit, I'll tag along. Haven't been to HK in about 15 years now.

I will go through the contract tomorrow and pass any final comments. Thanks for taking the time to clarify my concerns.

Best Regards,
 John

On 4/24/10 12:50 AM, "Will Wang Graylin" <wgraylin@roamdata.com> wrote:

John,
 I appreciate you looking out for our interest. There are several facts that you should understand, otherwise the deal would look like it favors them unnecessarily.

1) They have been developing the Cyrpto Swipe well before I met them, this is THEIR product, and their IP on encryption with no battery power. The fact we can demo it now is because of they had been working on it. Our own FSK reader design would still take a while for it to be done and much testing to perfect, we may still use it in the future, but less in a hurry to do it.

2) The \$3 mark-up is more than reasonable with our cost is at around \$8.50. Most accessory devices are several times this amount. Given it is their product, they normally have a right to sell it in the market to other people which would confuse the market, as we have seen with ID Tech selling to NAB. I am convincing them to take it off the market and give us exclusivity, and we still have a sub \$10 reader. This price is more than fair. If we sell 20,000 units, they make \$3 per unit, that's \$60K, our revenue per merchant per year is \$100 plus.

3) The BBPOS low cost debit unit is also THEIR product, we are going to modify it for our needs for Casino and potentially apple, and still get the unit at sub \$50, and with printer our target price is sub \$75. They plan to get the unit EMV certified by June. They can sell a lot of these units without us. I am getting them to work with us here and jointly sell these units so we can maintain higher margins and not confuse the market.

4) Giving them 25% net profit is ONLY for deals they sell, they do not have a big sales force, so any deals they bring which can earn recurring revenue, means it is good opportunity for us. We normally would be glad to pay a channel who sells the product for us at 25% Revenue share, so here 25% Net Profit share is a no brainer. For China and the Philippines, they have some contacts there that they can bring us into for revenue share, they are talking about selling their own products there.

5) Because of their talent and their existing design that we can leverage can we even think about creating a EMV L1/L2 PED certified product for Casino project for this kind of price. I spent a hell of a lot more for my last design, and Christophe is expecting to spend \$1.5MM Euros on his Apple product. I have been in this industry for a long time and I can recognize a good deal and recognize talent.

6) They have a team of people that can help us on the software side, that is why I am contracting them. I do want to engage them and build a relationship where we can rely on them. Note that there is no time limit or obligation to keep paying them \$25k/month. If we can leverage them more long run, than great. If we are short on cash or don't need them any more we can cut it off tomorrow. This is also stated clearly in Schedule II for the avoidance of doubt.

7) The payment terms for the development of the ROAMpay POS device of \$250K is stretched out very specifically based on deliverables, this can drag on for months and based on certifications that are very concrete as you can see in Schedule II, first bullet.

8) We will get credit for money that is not yet used from our contract. See second bullet of Schedule II.

John, I think this is a good deal for us, and is fair for them. Ultimately it is about long term relationship of their team working with our team to produce value we can sell that matters. Chinese call it "Guan Xi" – which means relationship, we're building one with these guys, which is based on trust.

Please let me know your thoughts on the contract. I'll give you a call this weekend to finalize.

Best,
Will

From: John Frontz [<mailto:jfrontz@roamdata.com>]

Sent: Thursday, April 22, 2010 1:17 PM

To: Will Wang Graylin

Subject: Re: BBPOS Development and License Agt.

Will,
I've had time now to catch up to your comments and I think we need to take my comments seriously and

address each one before we sign any deal or commit any funds. I know we need to move quickly – and you know I fully support the peripheral deal and the Casino unit.

I don't like this deal the way it is structured now. We are basically kicking a large amount of \$250K and we need to do this based upon strict performance on the swiper. We need to get credit in this document for prior contract items and have this paid out over time as they deliver. The \$25K per month is a large amount for developers in China, so we need to have the ability to turn this off if we aren't successful in using their people over the next few months for development - \$25K here could bring 3 full-time young guys to John's team here without the language and time issues, so I hope it works but it may not. The \$50K should be offset by what we paid to them and committed to pay in the last deal. The net profit stuff and \$3 mark-up is too rich and not manageable or easily accounted for – 25% Net profit share without overhead allocations is too rich and should be a modest revenue share at best. Without us, these guys are out of business and have nothing – just an unencrypted swiper that reads off one track. We are basically funding their entire company and we are getting no warrants and no revenue share for their China distribution of a product we have corrected design-wise and paid fully to design – we should have exclusive everywhere plus a royalty for any they sell in China, plus low cost warrants for at least 35% of their company.

I understand what we are trying to do, but we need to carefully structure a deal that works for us. Without our funds they have nothing. Without our recent improved design work and input they have nothing. I'd be happy to support a deal that really addresses my concerns here – maybe I'm missing something but if we are taking on a subsidiary with no ownership upside I think that is foolish.

Let's slow down and make sure we are on the same page – as you know this puts a ton of pressure on our cash flow near term and I want to make sure we have the right balance of risk and reward here for Roam given the risk we are taking. I do believe there is real upside and I don't doubt these guys are good, but we should have a better and clearer deal and share in their upside survival given our funding. I would be happy to support the right deal here.

John

On 4/20/10 1:18 AM, "Will Wang Graylin" <wgraylin@roamdata.com> wrote:
John, thank you for the comments. My comments below next to yours.

Bill, don't worry about the details of these right now, I will work with John on the terms and will make some modifications based on his and Ben's comments. If we have specific questions we will ask you for it. Thank you.

Will

From: John Frontz [<mailto:jfrontz@roamdata.com>]

Sent: Monday, April 19, 2010 1:28 PM

To: William S. Gehrke; 'Will Wang Graylin'

Subject: Re: BBPOS Development and License Agt.

Bill / Will – I just caught up with this. I think we need to carefully think through this deal and take our time to get it right.

My comments:

1.3 – I don't know how we will accurately measure 25% of Net Profit – allocating COS, and customer service costs will be difficult and time consuming. I don't like giving these guys most of our bottom line profit assuming that we would be lucky to push 30% to our bottom line after overhead. I also don't like giving them a share of recurring revenue – we should just give them an extra 10% one-time commission on the hardware that they sell for us. They have little to do with our service and providing transaction revenue down the road. I would give them a 10% commission on the actual price paid by the customer that they bring to us (this should be an actual hardware order at a price we choose to accept) assuming we would normally clear 40 to 50% on the hardware and only on their hardware piece. This simplifies the accounting. [BBPOS will not be a big reseller anyway, they

would need to sign a Reseller Agreement to be agreed upon, this agreement is where we can define metrics to make it easy on accounting. 25% of Net Profit is fair, as long as we make it easy to account. I added a sentence to state that we will define a simple accounting metric to determine the Net Profit commission share.]

1.3 – They have a non-exclusive China right – given that we are paying to finalize a specific product, we should get a 5-10% royalty for any sales they book in China for the products they develop with our money? We are giving them critical funding to survive and be able to sell anything and for that we should get something for anything they sell that we pay to develop. If they could sell on their own without us that would be different. [we are licensing their product exclusively, they have already developed it, our bigger value is not earning a few cents per device, but getting them to package our software longer term. I'm not worried about them getting rich on hardware sale and getting a royalty off device IP that we don't own. The other products we have them build is a different story, they don't have rights to sell it at all.]

3.4 – Says they will deliver all this stuff to Boston? I like that. [Saying they handle import and export, different than FOB Boston, we may have them ship else where in the world.]

3.5 – Is our cancellation immediate? Do we suspend payment immediately or is there a notice period? [I think it is fine here.]

3.8 – What are the penalties for mis-representation?? [we can sue them for damages and terminate agreement for breach of contract.]

3.15 – Proof of insurance – what amount are we thinking?- what type of insurance?- should be provided with their signature if it is here, not upon request? [\$1MM liability insurance is reasonable I think.]

3.16 – Do we have specifics on The Partner paying for any warranty claims including shipping to and from customer and paying for duties and taxes as well. [logistics we can sort out, no need to complicate things on this agreement, we can use standard stuff which they would need to do anyway.]

4.1 – Contradicts 3.4 and says FOB HK. [OK here, standard, we'll take care of logistics.]

9.2 – Do we also have the rights to the other Products? RoamPay Swipe since this has our proprietary audio jack and encrypted design – they only had a non-encrypted version before we showed them the light??

[Actually they have been developing the encrypted version well before we showed up, and created this method whereby they don't use a battery. We already have rights from the other contract for the FSK audio coupled reader with speakers. That one is ours.]

Schedule II –

1.) I don't follow the payment schedule here. Is it \$25K for 8 months = \$200K and then \$50K at some other point? Or is the \$250K in addition to these. Is there any limit to what we owe them here – there should be. Are any of these payments linked to deliverables – they should be. I thought the \$25K was for development activities, but defining exactly what will be important and how long? [The \$25K/ month is for outsourcing of work, and we can scale that up or down as we see fit. To be clear, I made a comment in there to show it being separate outsourcing arrangement, not consideration for licensing.]

2.) The comment about \$3 per crypto swiper doesn't track with me – is that above the \$8 target price and is that for delivery and export / packaging to Boston per 3.4?? [They will show us the BOM (bill of material) and packaging cost, they will add \$3 on top of that. Initial build should be around \$8.50 per unit.]

3.) Options are at \$0.12 – I think we need a vesting schedule here based upon performance and delivery and maintaining certain cost and quality objectives. Some vest upon first deliverable on time and on budget and the rest based upon delivery and meeting quality (minimal returns) etc. [They are providing exclusive, so they don't go and cloudy the market and get people like Marc Gardner to chase them directly for the Circle Swipe. They would argue they should get the stock fully vested. We can put 25% immediate, with rested vested over 1 or 2 years assuming contract is not breached.]

4.) Again I don't like net profit calculations – let's set a revenue hardware only royalty – I don't understand what else they are doing other than making the hardware work per the specs. [We would give any referral partner share of revenue if they brought customers, this is no different. They still need a reseller agreement to clarify.]

5.) How does this contract interact with our previous one – I'm confused, do we not owe the other amount for the unencrypted version – the \$6500?? How does it impact the other \$25K for the other encrypted swiper deal

– is that wiped away with this since it covers the revised swiper? Where do we deal with this – If I'm confused that's a bad sign – this agreement needs to clear this up and maybe wipe away the others???. [The previous contracts stand on their own, and we'll just need to cancel them and apply the money and tooling to the next order of ROAMpay Swipe we place. I have put a hold on the Audio speaker project for now. They first order of Crypto Swipe actually applied to the tooling we paid for, but this tooling can be used with the ROAMpay Swipe.

The development of the FSK Speaker portion, some of the work has been done, I'll ask Ben to figure out what part still remains so we can apply the rest of the credit to our next purchase order of production ROAMpay Swipes. If we start up the FSK Speaker version again, they can ask us to finish paying for that project.

Another words, I'll get the other two orders to be credited towards the next delivery of ROAMpay Swipe products, and cancel the first Circle Swipe, and put on hold the Speaker Swipe for now.] I'll know how much credit is applied, but it should not affect this agreement. I don't want to complicate things here.]

Sorry Will – I may just not fully understand what this deal does in relation to the others. I understand the crypto swipe and the RoamPos for the Casino and other applications, but I'm lost on how this deal impacts our other two existing deals and payments we have made - \$6.5K and \$29K paid to date for those others.

Thanks,
John

On 4/14/10 9:22 AM, "William S. Gehrke" <bill@wsglegal.com> wrote:

Hi Will and John – My additional suggestions are attached. If you have any questions regarding these changes, please feel free to contact me. Thank you.

Best regards,

Bill

From: Will Wang Graylin [<mailto:wgraylin@roamdata.com>]
Sent: Wednesday, April 14, 2010 3:54 AM
To: 'William S. Gehrke'; 'John Frontz'
Subject: RE: BBPOS Development and License Agt.

Hi Bill,
Thank you for turning this around to me quickly.
I made my edit and comments here. Please take a look and make any suggestion before we finalize it.

Best regards
Will

From: William S. Gehrke [<mailto:bill@wsglegal.com>]
Sent: Tuesday, April 13, 2010 5:40 PM
To: 'Will Wang Graylin'; 'John Frontz'
Subject: BBPOS Development and License Agt.

Dear Will and John – Attached is a preliminary draft of the new BBPOS agreement. I prepared this form based

The business terms that you provided reflect a multi-faceted transaction encompassing many elements, including licenses, development provisions, product deliveries, ownership provisions, confidentiality, profit sharing, stock options, etc. I am currently working on similar agreements for two other clients, and each of those agreements (drafted by opposing counsel) exceeds 50 pages. However, based on factors such as the required timeframe and the brevity of the prior BBPOS agreement, the attached agreement is relatively short and sparse considering the scope of activities covered by the agreement. If you have any questions concerning the pros and cons of this approach, let's discuss.

There are a number of bracketed NOTES TO ROAM for you to consider throughout the agreement. These will need to be addressed and deleted before providing the agreement to BBPOS.

Please let me know how you would like to proceed -- you can revise the document, you can send me comments and responses to the notes so that I can revise the document, or we can schedule a call to discuss. Thank you.

Best regards,

Bill

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